

REMARKS

The comments of the Examiner as set forth in the official office action of March 19, 2003 have been carefully studied and reviewed. In this response, claim 1 has been amended. For the reasons set forth below, it is respectfully urged that the present application is in condition for allowance and allowance is respectfully requested.

The Examiner has rejected claims 1-3, 5-11, 13-15, 27 and 28 as being unpatentable under 35 USC §103(a) in view of Sower and Lloyd. For the reasons set forth below, it is urged that the Patent Office has not made out a prima facie case of obviousness and that the claims at issue here are patentable.

As the Examiner appreciates, the burden is on the Examiner to make out a prima facie case of obviousness. In order to make out a prima facie case of obviousness, the Examiner must show two things. First the Examiner must show that the primary reference, which in this case is Sower, as modified includes each and every element of the claimed invention. Secondly, the Examiner must show that there is something in the prior art or in the knowledge of persons of ordinary skill in the art that would have motivated such a person to select the references in the first place and to modify them in the second place. In other words there must be a reason for the modification. The modification, of course, cannot be based on hindsight. There must be something that would induce a person of ordinary skill in the art to make the modification. Further, the modification cannot be inspired by Applicant's own disclosure. That is, the Examiner should not be able to rely on the teachings that the Applicant makes in order to articulate a motivation. Also, the proffered motivation cannot be mere conclusionary statements but must be based on realistic and substantial evidence.

With respect to the above recited claims, the Examiner acknowledges that Sower does not anticipate the claimed invention. In particular, the Examiner notes that Sower does not teach separating the liquid from the waste and returning it to the animal confinement house and utilizing the separated liquid to flush the house. The Examiner notes:

It would have been obvious to one skilled in the art to modify the method of Sower by reusing the recited separated liquid for flushing waste in view of the teachings of Lloyd, to reduce the amount of water required to flush waste from the confinement area or hog barn.

This proffered motivation must fail for a number of reasons. There is no evidence in the record that indicates that there is a significant concern among those people skilled in the art in conserving water used for flushing animal houses. Ground water and water from ponds is freely available in most all agricultural regions of the United States. The proffered motivation in this case has no basis in the record.

Secondly, to the extent that water is conserved, that is the teaching of the Applicants in this case. That is a benefit or an advantage that is readily apparent from the disclosure of the present invention. Again, as noted above, it is improper to use a teaching of an Applicant to form the basis for the motivation to combine. The Examiner, it is respectfully urged, should not use what the teacher has taught against the teacher.

Therefore, for those reasons it is respectfully urged that claims 1-3, 5-11, 13-15, 27 and 28 are in condition for allowance.

Claims 4 and 16-21 stand rejected under 35 USC §103(a) as being unpatentable under Sower in view of Lloyd and in further view of Seckler. For the reasons set forth below, it is urged that the Examiner has failed to make out a prima facie case of obviousness. The Examiner acknowledges that the first two references, Sower and Lloyd, do not teach or suggest separating the solids into undigested and digested feed. Then the Examiner notes that Seckler discloses that it is known in the art to separate animal waste solids and undigested and digested feed, to aid in the recovering protein, fiber and grain feed products. Then the Examiner concludes:

It would have been obvious to one skilled in the art to modify the references as applied above, utilizing the recited solid separating step in view of the teachings of Seckler et al., to aid in recovering feed products.

This proffered motivation is, on its face, conclusionary. That is the object of the invention set forth in claim 4 for example. There is no evidence in the record that supports the proposition that one of ordinary skill in the art would be motivated to combine Seckler with Sower as modified by Lloyd. Simply by articulating "to aid in recovering feed products" is not a motivation to combine. The motivation articulated by the Examiner must be more than such a mere conclusionary statement and must have depth and reasoning that reflect a true reason why a person of ordinary skill in the art would be induced to make the modification.

This same argument applies to claims 23-26 and claim 29 and the rejection set forth in paragraph 10 of the office action. The recited motivation fails to put forth a proper motivation to combine and consequently a prima facie case of obviousness has not been made.


For the foregoing reasons, it is respectfully urged that the present application is in condition for allowance and allowance is respectfully requested.

If additional fees are required please charge them to Deposit Account No. 18-1167.

Respectfully submitted,

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